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Senator Dianne Feinstein

of California

Senator Feinstein Urges Opposition to Liability Exemption for Gun Manufacturers and Dealers February 24, 2004

Washington, DC – U.S. Senator Dianne Feinstein (D-Calif.) today spoke in opposition to legislation granting gun manufacturers and gun dealers a special exemption from lawsuit-immunity which no other industry enjoys.

Senator Feinstein delivered the following statement on the floor of the U.S. Senate today.

“Mr. President, I rise today to speak on the bill that is before this body, and I wish to begin by saying that I have great respect and have enjoyed working with the Senator from Idaho on a number of issues, including Healthy Forests. But I also must say we profoundly disagree when it comes to guns. So it is probably no surprise to him that I rise to strenuously object to what I see happening here.

I think we have to recognize that guns in America are responsible for the deaths of 30,000 Americans a year. The question comes whether we should be giving the gun industry sweeping and unprecedented protection from the type of lawsuits that are available to every other victim involving every other industry in America.

The simple fact is that over the years, the gun industry has managed to lessen, avoid, or prevent any prudent regulation. For example, they are exempt from Consumer Product Safety Commission laws, thanks to the National Rifle Association's efforts over the years to keep it that way.

Secondly, the Federal Government cannot do much to police bad gun dealers -- and we know there are some -- or to enforce gun laws because the hands of the ATF, the Bureau of Alcohol, Tobacco and Firearms, are tied by limits to their authorities which have been put in place by the National Rifle Association. They can only do a once-a-year audit, for example. They only have limited options.

The number of ATF agents is kept so low they cannot possibly inspect all of the gun dealerships in this country. So today only the court system offers victims of negligent manufacturers, of which there are some, and dealers, of which there are some, the ability to receive compensation for their injuries. Only the court system provides a means for changing these negligent practices through the threat of legal liability.

I hope to show that the threat of legal liability has, in fact, resulted in more responsible manufacturing and selling principles by this industry. If we remove this one remaining avenue toward enforcing responsibility, victims will have no recourse. Gun owners and gun victims alike will be left virtually powerless against an industry that is already immune from so many other consumer protections. So we find ourselves today on the cusp of yet another NRA victory.

Let me be clear, this is not a victory for NRA members, most of whom are law-abiding gun owners who might some day benefit from the ability to sue a manufacturer that sold them a defective or dangerous gun. No, this will be a victory for those who have turned their organization into a political powerhouse, unconcerned with the rights of the majority of Americans who want prudent controls over firearms.

I do not support meritless lawsuits against the gun industry. I do not think anybody does. It is my belief gun manufacturers and dealers, though, should be held accountable for irresponsible marketing and distribution practices, just as anyone else would be, particularly when these practices may cause guns to fall into the hands of criminals, juveniles, or mentally ill people.

This legislation has one simple purpose: to prevent lawsuits from those harmed by gun violence. These include: suits filed by cities and counties which face rising law enforcement and medical costs due to increased gun crimes, crimes often committed using guns that flood the illegal market with the full knowledge of the distributors that the legal market could not possibly be absorbing so many of these weapons; suits filed by organizations on behalf of their members; and victims of violent crimes and their families who are injured or killed as a result of gun violence or defective guns that malfunction due to negligent design or manufacture.

This issue is not an abstract one. When people vote for this gun liability absolution today, they are going to be hurting a lot of people all across this land, and I want to point out a few because this bill affects the lives of real gun victims, victims not simply of criminal misuse by a well-designed firearm, but victims of guns that have been designed poorly or marketed in ways which quite frankly should be illegal.

One of the cases that could be affected by this legislation, though this would ultimately be decided by a judge, is that of Brandon Maxfield, a 7-year-old from my State, Oakland, CA.

On April 6, 1994, Brandon was shot in the chin by his babysitter. The shooting left him a quadriplegic and he will never be able to walk again.

The babysitter, a friend of the family, was simply trying to remove a bullet from the chamber of a weapon that was found in the house, a .38 caliber Saturday night special, when the gun accidentally fired.

Here is the key: The weapon was clearly designed in an inherently dangerous way. It can only be unloaded when the safety is in the off position and can therefore fire.

Now common sense might say when you want to unload a gun you would first put the safety on. It defies common sense, on the other hand, to design a firearm so it can only be unloaded in the firing position. After all, one might expect the gun to accidentally fire as someone like Brandon's babysitter struggles to unload it.

Finally last year, after 9 years of litigation, a jury found the manufacturer and distributor of Saturday night specials partially liable for Brandon's injuries. This was a tremendous victory for Brandon and his family and a victory for all people who want to see guns made safer. This bill, however, would take away Brandon's right to sue, and I will explain why a bit later.

The bottom line, though, is Brandon's case was not frivolous. The jury did not think it was. Without the threat of lawsuits, companies like the one that made the gun in this case will have little incentive to change the design, but this legislation would remove the threat of that suit, depriving Brandon of compensation but, even worse, depriving the public of this key avenue to improving the habits of gun manufacturers.

I will quickly go through what the bill does. I know others have and will continue to speak to this, but I think it bears repeating because I do not think everybody supporting this bill really understands its full ramifications.

Essentially, this bill prohibits any civil liability lawsuit from being filed against the gun industry for damages resulting from the criminal or unlawful misuse of a gun, with a number of narrow exceptions.

In doing so, the bill effectively rewrites traditional principles of liability law, which generally hold that persons and companies may be liable for their negligence even if others are liable as well. This bill would essentially give the gun industry blanket immunity from civil liability cases, an immunity no other industry in America has today.

The bill does allow certain cases to move forward, as its supporters have pointed out, but these cases can proceed only on very narrow circumstances. Countless experts have now said this bill would stop virtually all of the suits against gun dealers and manufacturers filed to date, many of which are vital to changing industry practice and compensating victims who have been horribly injured through the clear negligence or even borderline criminal conduct of some gun dealers and manufacturers.

The exemptions in the bill, even the new bill, set a very high burden of proof of negligence for plaintiffs, allow for a very slight number of cases against gun manufacturers to be filed, and only protect a limited class of cases against sellers.

Under this bill, cases could only be filed in the following narrow circumstances. First, if a gun dealer transfers a firearm knowing the gun will be used to commit a violent or drug trafficking crime. In other words, a suit could go forward if a dealer gives a gun to someone who comes in and says, 'Give me a gun, I need to go kill someone.' This provision only applies in the highly unlikely event a gun buyer clearly indicates his or her criminal intentions to the gun seller. Fat chance of that happening.

I am not a gun dealer, but I imagine most criminals do not make a habit of announcing their criminal intentions to gun dealers. So this exception to the immunity created by the bill is really no exception at all. It will apply to almost no cases.

Secondly, there is an exemption in the bill which applies if a dealer sells a gun to someone knowing the buyer will or is likely to misuse the firearm and that the individual buyer does indeed misuse it to commit a criminal offense. This provision is slightly more likely than the first exemption, but it still requires a very high burden of proof. Instead of common negligence, which might only require that the dealer did not take enough care in making sure that criminals did not obtain guns to commit crimes, what this provision requires is that the dealer actually know that the buyer is likely to use the gun to do harm.

How can this be proven? Mr. President, you are an attorney. How can this be proven? The difficulty in proving such a claim might all but bar this exemption from ever coming into play. It would have no effect on such practices as straw purchases and large volume sales -- which, incidentally, are the two most common sources of crime guns -- because in a straw purchase, the dealer could always claim that he or she had no idea what the buyer would be doing with the guns.

Third, the bill would allow suits to proceed where a defendant has violated a law or regulation in the sale of the specific gun that caused the damage or injury. This sets a very high burden of proof for negligence. Again, this would not affect dealers who conduct straw purchases or other dangerous distributing conduct because such conduct does not specifically violate any laws or regulations, although I must say it should.

Because there are so few real laws or regulations governing how guns are sold or manufactured, this provision, too, is relatively insignificant in terms of how it affects the underlying thrust of the bill.

Now I should point out that this provision is different than the provision in the original bill as passed by the House. Under the original bill, only knowing and willful violations of the law could be subject to suit, which is an even higher burden to reach. But even under this revised legislation, this standard is far higher than current law.

The simple truth is, negligence does not involve a violation of the law. Requiring a plaintiff to prove that a gun store, for example, was not only negligent in letting a criminal obtain a dozen guns, but the gun store actually violated a law in doing so, of which there are few, makes it very difficult to succeed.

So with any other business or product, in every other industry, a seller or manufacturer can be liable if it is negligent -- but not here. Since money, rather than life or liberty is at stake in a civil case, the standard of proof is lower. There need not be a criminal violation to recover damages, and in the overwhelming majority of civil cases there is no criminal violation. So if, for instance, a crib manufacturer designs and markets a crib that results in the death of children who use the crib, we allow that manufacturer to be sued as one means of deterring such conduct and of compensating the families of the children who died from the defectively designed crib. The manufacturer need not have committed any crime. It is the negligence in making a defective and dangerous crib that is enough.

Here, contrary to general negligence law covering almost every other product, this bill allows negligent gun dealers and manufacturers to get off the hook unless they violated a criminal law. That is just dreadful. You are creating a special area of law for gun manufacturers and saying unless they violate a law they can manufacture a defective weapon.

The judge in Washington State presiding over the case brought against the DC area snipers has twice ruled that the dealer, Bull's Eye Shooters Supply, and the manufacturer, Bushmaster Firearms, may be liable in negligence for enabling the snipers to obtain their gun. But even with the new modifications, the sniper victims' case could very well be thrown out of court under this bill. So know what you are doing, Members who vote for it. The sniper victims' case could well be thrown out of court by this bill because there is no evidence that either the negligent dealer or manufacturer violated a criminal law.

Indeed, both Lloyd Cutler and David Boies, each prominent attorneys, recently stated unequivocally that the sniper case would have to be dismissed under this bill, and countless professors have written a letter agreeing with this interpretation of the law.

This is the most notorious sniper case in America. You have negligence on the part of the gun dealer who sold that gun, didn't report it until way late, allowed the snipers to get that gun, and now we are passing a law to prevent the victims from suing under civil liability. Nowhere else in the law does this exist.

In another case, a Massachusetts court has ruled that gun manufacturer Kahr Arms may be liable for negligently hiring drug-addicted criminals and enabling them to stroll out the plant door with unmarked guns to be sold to criminals. But with the proposed changes, the case against Kahr Arms would be dismissed. Its conduct, though outrageous, violated no law. Negligent? Yes. Criminal? No.

Members, know what you are doing when you vote for this bill.

The fourth exemption in the bill is when a dealer somehow violates a sales contract. An example of this would be the dealer failing to provide the gun the purchaser paid for. This, too, is clearly a limited exception. Victims of defectively designed or negligently sold guns would not be allowed to file cases under this provision. Furthermore, the claims of gun purchasers would be limited to what they were entitled to under the scope of the contract or warranty.

The fifth exemption in the original bill allowed suits to go forward if the gun manufacturer has caused 'physical injuries or property damage resulting directly from a defect in design or manufacture of a product when

used as intended.’ This provision altered generally accepted principles of products liability law which essentially state that a manufacturer must implement feasible safety features that would prevent injury caused by foreseeable use or misuse, even if that use is not ‘intended.’ For instance, it might not be intended for a child to try to eat a small toy, but it is clearly foreseeable.

This new modified gun immunity legislation does add language allowing suits to go forward as long as the activity was ‘reasonably foreseeable’ by the manufacturer or dealer, which appears to match current law. However, the devil is in the details because the bill then takes away any benefit that language might have by stating that the exemption will not apply to lawsuits that also involve criminal acts by the defendant.

The best example of how this provision would affect the case is the Brandon Maxfield babysitter shooting I mentioned earlier, where a child was accidentally shot by a babysitter because the chamber of the gun could not be checked without clicking the safety to ‘off.’ In that case, the gun fired while the babysitter tried to check the chamber.

The problem is the bill prohibits suits involving even foreseeable accidents, if there are criminal charges. In the babysitter case, the babysitter could easily be, and indeed was, charged with manslaughter -- which is a crime. Thus, even this suit would still be barred by this revised bill.

Contrary to current law which allows judges and juries to apportion blame and damages, this bill would bar any damages against a manufacturer if another party was liable due to a criminal act.

Why should firearms get special treatment? In our society, we hold manufacturers liable for the damage their products cause. This is the case with automobiles. This is the case with cribs. It is the case with children's toys, and it should be the case with guns as well. Lawsuits filed against the gun industry provide a way for those harmed to seek justice from the damages and destruction caused by firearms. Just as important, they create incentives to reform the practices proven to be dangerous.

After all, this is the most dangerous consumer item found in a home.

According to statistics, there is a gun in 43 percent of the households with children in America. There is a loaded gun in 1 of 10 households with children, and a gun that is left unlocked or improperly stored in 1 of every 8 family homes.

More children and adult family members are killed each year by having a loaded gun at home than from incidents with criminal intruders. In fact, a gun in the home is 22 times more likely to lead to an accidental injury or death to family members than used against a criminal intruder. These are senseless actions that can be prevented by simply designing guns with technologically and economically feasible safety devices.

Recent cases have produced evidence from law enforcement investigations, as well as industry insiders, that the gun industry may be ignoring numerous patented safety devices for guns and intentionally flooding certain markets with guns knowingly, and also profiting from the fact that the excess weapons would make their way into the hands of criminals. We have seen gun dealers selling guns when they know these guns are being purchased to immediately resell to criminals -- often to criminals who wait right outside the door or even inside the very store while the guns are being bought by someone who can pass a background check.

Lawsuits filed against the gun industry provide a way for victims and municipalities to seek justice from the damages and destruction caused by firearms.

Additionally, lawsuits provide this largely unregulated industry with incentives to reform irresponsible manufacturing and distributing practices proven to be dangerous.

According to Tom Gresham, a writer for the magazine *Guns & Ammo*, lawsuits have, in fact, proven effective in encouraging manufacturers to design their guns with proper safety devices. Even though guns are not required to be made with safety features, Gresham writes in the June 2002 edition of the magazine that lawsuits have spurred manufacturers to include them to avoid liability in future actions.

Don't we want this to take proven steps to improve the safety of their weapons?

Gresham claims, 'No matter what you think of them, you will find built-in locks on more and more guns in the future. I predict that in ten years, no firearm will be made without one.'

What does this bill do to that? It encourages the gun companies to do exactly the opposite -- to not put better safety components on their weapons.

When this bill was introduced, its supporters spoke about the need to protect the industry from frivolous lawsuits and the need to protect the industry from the potential loss of jobs brought on by future lawsuits. These claims are unfounded. This bill is simply the latest attempt of the gun lobby to evade industry accountability. The suits against the gun industry come in varying forms, but they all have one goal in common -- forcing the firearm industry to become more responsible.

In addition to ongoing cases filed by individual victims, there have been a handful of cases filed by private associations, such as the National Association for the Advancement of Colored People, and the National Spinal Cord Injury Association. These cases have been filed on behalf of groups of individuals who claim to have been harmed by the gun industry's bad behavior.

And there are government cases -- at least 24 cases -- that have been filed against the gun industry on behalf of nearly three dozen cities and counties and one State attorney general claiming that the reckless conduct of the gun industry has threatened public safety and hindered the ability of municipalities to provide for the health and welfare of their citizens. A majority of these municipalities' lawsuits have successfully defeated industry attempts to dismiss their cases. This bill would kill that.

Last year, Dennis Herrera, City Attorney of San Francisco, said that, 'Cases being pursued by my office and some 30 other jurisdictions nationwide have already achieved important milestones in exposing gun industry recklessness, with mounting evidence and an increasing number of high-level whistle blowers revealing gross misconduct by manufacturers and dealers...I'm convinced that the City and its fellow plaintiffs have a compelling case against the gun industry.'

This legislation would prevent them from going ahead.

Let me describe a few representative cases that could have been also been stopped by this bill.

The case of *Cincinnati v. Beretta* is one example of a legitimate and successful case filed against the gun industry. In this case, officials from the city of Cincinnati, OH, contended that the gun industry's reckless marketing and distribution of guns enabled them to wind up in the hands of criminals and children leading to murders, shootings, and suicides that imperil public safety. The city also argued that gun manufacturers were negligent in failing to design safer weapons and owed the city compensation for the cost of emergency responses to acts of gun violence.

The Supreme Court of Ohio agreed and ruled the issue deserved exploration at trial. The court found that under generally applicable principles of law, it is the duty of gun manufacturers to use reasonable care in their design and sales of guns, and they may be liable for damages arising from their negligent conduct and failure to equip their guns with practical safety features.

This is no different an analysis than would be used against the manufacturer of any product used by a consumer -- whether a child's crib, a toothbrush, a chainsaw, or an automobile.

The Court also found that a manufacturer could be held liable for their role in creating and facilitating the criminal gun market through their failure to use reasonable care in their sale and distribution of guns. The Court specifically rejected the argument that those who irresponsibly sell guns cannot be liable if the damage foreseeably resulting from their negligence was ultimately caused by a criminal act.

Furthermore, the Court noted the socially beneficial role of lawsuits against gun sellers and manufacturers can play:

'If as a result of both private and municipal lawsuits, firearms are designed to be safer and new marketing practices make it more difficult for criminals to obtain guns, some firearm-related deaths and injuries may be prevented...Such litigation may have an important role to play, contemplating other interventions available to cities and states.'

This case could well be stopped in its tracks if this bill passes.

In another case, *Hurst v. Glock*, the New Jersey Court of Appeals also ruled in favor of the plaintiff. This products liability case centers on an incident in which a teenage boy, Tyrone Hurst, was seriously injured when his friend picked up a gun she thought was unloaded and fired at Tyrone. The Hurst family argued that the shooting could have been prevented had the gun manufacturer included a safety feature known as a magazine disconnect safety.

Again, the Court agreed and found that the gun manufacturer could be liable for injuries caused by the failure to include a safety feature on the firearm. Wiped out.

In 1994, Griffin and Lyn Dix from Berkeley, CA, lost their youngest son Kenzo after he was accidentally shot to death at the age of 15 by his best friend, Michael. Michael was showing his father's gun to Kenzo and, believing the gun to be unloaded, pointed it at his friend and fired. Michael did not realize there was a bullet hidden in the chamber of the gun.

In an interview after the incident, Michael described the situation after turning the gun on his friend:

I look down and I don't even aim. I heard a pop, my eyes opened up and I was shocked. I look and saw Kenzo hunched over, kind of moaning -- a creepy moan you don't want to hear. It just stays with you.

The bullet went straight into Kenzo's chest. Tragically, he was pronounced dead within the hour.

Kenzo's parents sued Beretta, the manufacturer of the gun that killed their son. They argued that the gun lacked adequate safety features and warnings and that is why it appeared unloaded despite the fact that a bullet lay in the chamber.

The case sent a necessary wake-up call through the industry that they could rightly be held accountable in future wrongful-death cases. Faced with the threat of litigation, a number of manufacturers have changed their design standards and designs to include proper and practical safety features. That is a positive benefit all across this Nation.

I ask my colleagues, how can we justify giving blanket immunity to the gun industry that manufactures and distributes products that kill 30,000 Americans a year, yet fail to provide the proper and practical safety features in their products?

Under the principles of common law, all individuals and industries have a duty to act responsibly. How can we give total legal immunity to an industry that time and time again has failed to act in such a manner?

This is not just about manufacturers and the design of products. It is also about gun dealers and distributors that know their guns are sold to be used in crime.

This very bill was scheduled to come to the Senate for consideration during the 107th session of Congress. It was withheld in light of the sniper attacks that terrorized the Washington, DC area. I guess enough time has now passed that the bill's supporters think we will have forgotten those sniper victims. But we have not.

We have already heard today that the victims of those attacks have filed one of the cases currently pending. The suit results from alleged negligent conduct of a gun dealer that has been accuse of some incredibly negligent conduct.

Mildred Denise Muhammad filed three restraining orders against her husband, John Allen Muhammad, one of the convicted snipers. Those restraining orders should have prohibited John Allen Muhammad from owning a gun. However, nothing stopped him from obtaining the handgun he allegedly used to commit murder in Alabama, nor the Bushmaster XM-15 assault rifle used in the sniper attacks, in all likelihood because the dealer that had the Bushmaster assault rifle was either negligent or willful in allowing it to fall into Muhammad's hands.

The assault rifle used in the sniper attacks was one of 238 guns that have been reported missing from the Bull's Eye Shooters Supply store in Tacoma, WA. We learned about this dealer's dangerous inability to keep track of his guns not from the store itself but, rather, from audits performed by the ATF. The store had no record of purchase for the assault rifle used in the attacks and failed to report it stolen until after the ATF recovered the weapon from the snipers and traced it back to the store. Here is a store that has 238 guns that are missing and does not report them. That is class A evidence.

Even after this blatant display of negligent conduct, the rifles manufacturer announced that the gun store remained a 'good customer' and it would continue to sell guns to the store. The manufacturers showed clear disregard for the victims, their families, and public safety.

And the store itself, in either failing to adequately account for its guns, or even worse, illegally selling the gun to a prohibited person, may well also be liable for its conduct. The alleged snipers were clearly aided and abetted by the irresponsible conduct of the owners of this gun shop that managed to simply lose hundreds of deadly weapons and the manufacturer that supplied serious combat weapons to a dealer with no questions asked.

If they are not liable, they will be found not liable by a jury; but if they are liable, should we not allow a court to decide? How can we, with a clear conscience, pass a bill that would deny the right of these victims of gun violence their day in court?

As I mentioned earlier, this case would almost certainly be dismissed if the bill now before the Senate becomes law. With no liability threat, few ATF enforcement tools, and a blanket exemption from consumer laws, Bull's Eye will have no incentive to clean up its act.

Such disregard for public safety is identified in another case filed against the gun industry, Lemongello and McGuire v. Will's Jewelry & Loan. In this case, the argument that those who irresponsibly sell guns cannot be held liable if the guns were later used in a criminal act was again rejected, this time by West Virginia Circuit Court Judge Irene Berger.

As the Presiding Officer knows, a felon, fugitive, or stalker cannot legally buy guns. So sometimes the individuals will find someone also to help them evade the current gun laws and get their hands on a gun.

A straw purchase occurs when a buyer purchases guns on behalf of criminals or other individuals who are prohibited from purchasing guns. Federal law enforcement agencies estimate 46 percent of crime guns nationwide come from this type of purchase. I repeat, 46 percent of the guns used in crimes in America come from these straw purchases with gun dealers.

The National Shooting Sports Federation is the gun industry's leading trade association. It is fully aware of the reality that guns from straw purchases are often ultimately found in the hands of criminals. The Foundation also recognizes that these dangerous purchases can easily be prevented so long as dealers act responsibly.

To promote this policy, the Foundation provides training for gun dealers 'to help prevent and deter the illegal 'strawman' purchase of firearms.' In the brochure of its training campaign entitled 'Don't Lie for the Other Guy,' the Foundation claims that it is the responsibility of the gun dealer to prevent these purchases from taking place by simply prohibiting any sale they suspect to be a straw purchase.

Despite these warnings, a straw purchase is exactly what took place at Will's Jewelry & Loan, a West Virginia pawnshop, in the fall of 2000. James Grey, a felon and gun trafficker, came into the store accompanied by Tammi Lea Songer, a woman who had a clean background and thousands of dollars in cash. James Grey methodically selected 12 guns he wanted and Songer bought them, all in a single purchase, no questions asked.

The shop's employees were suspicious of Grey and Songer's actions. They contacted the ATF to notify them of the purchase.

The problem is that the call to the ATF was made after the guns were purchased, after the profits were made by the dealer and Sturm, Ruger. The warning signs were so obvious, yet proper actions were not taken until it was too late.

Just months later, one of these guns, a 9 mm semiautomatic Ruger handgun, was used by a convicted felon to shoot and seriously injure two New Jersey police officers in the line of duty.

Officers Dave Lemongello and Ken McGuire were shot with that handgun while responding to the scene of an attempted robbery. The shoot-out put an end to the careers of both men. The injuries they received were so debilitating they could no longer serve.

Those officers filed a lawsuit against the dealer and Sturm, Ruger, who both profited from their irresponsible conduct. Their claims were recently validated, and the West Virginia Circuit Court found the gun dealer could be liable under West Virginia law of negligence and public nuisance for failing to use reasonable care in its sales. As a result, a jury could find the subsequent criminal shooting was a foreseeable result caused by that negligent act.

The bill we are considering today would turn a blind eye to the reckless conduct shown by those in the industry that enabled this tragic incident to have taken place.

Last year, Officer Lemongello spoke before the House Judiciary Committee to protest this bill. In his testimony he stated:

‘The next disturbing news I heard was that some people in Congress wanted to take away my right to present my case in court and wanted to give that irresponsible dealer special protection from the legal rules that apply to all other businesses in this country. Other businesses have to use reasonable care and may be liable for the consequences if they don't. Those who sell lethal weapons that are highly valued by criminals should have at least the same duty to use reasonable care as businesses who sell BB guns or any other product...Gun sellers have to be more responsible when they sell guns to prevent guns from getting into criminals' hands before they do their damage. What happened to me and Ken is an example of what happens when gun sellers are irresponsible.’

As if the valuable lessons learned from the cases I have detailed were not convincing enough to prove that criminals are able to get guns on the black market due to the complicity of gun manufacturers and dealers, simply listen to the words of gun industry insider Robert Ricker.

Former Executive Director of the American Sport Shooting Council and former Assistant General Counsel for the NRA, Robert Ricker has testified in support of lawsuits against the gun industry -- a brave man. In a recent affidavit, Ricker claimed:

‘Instead of requiring dealers to be proactive and properly trained in an effort to stop questionable sales, it has been common practice of gun manufacturers and distributors to adopt a ‘see-no-evil, speak-no-evil’ approach. This type of policy encourages a culture of evasion of firearms laws and regulations.’

In the same affidavit, Ricker also claimed lawsuits provide a valuable tool for motivating the industry to reform and act responsibly. He stated:

‘Until faced with a serious threat of civil liability for past conduct, leaders in the industry have consistently resisted taking constructive voluntary action to prevent firearms from ending up in the illegal gun market and have sought to silence others within the industry who have advocated reform.’

That says it all. They will not move to do the right thing, and they will silence others. That is according to one of their own insiders, and we go along with it and are going to give them civil liability protection. I cannot believe it.

Again, I do not support meritless lawsuits against any industry, including the gun industry. But the fact of the matter is, this bill's goal of granting the gun industry blanket immunity would cause much greater harm to the American public than it could ever possibly prevent for an already under-regulated industry.

The right way for the gun industry to protect itself from liability for irresponsible conduct is simply to act responsibly, by manufacturing guns with safety devices and ensuring their products are going to reputable, law-abiding dealers.

Is that asking too much? Is it asking too much that dealers enforce the rules on the books and prohibit straw purchases? Straw purchases, remember, are responsible for the sale of 43 percent of the guns in this Nation that are used in crimes.

I think dealers should enforce the rules on the books and prohibit these purchases. If litigation is the only way to keep the gun industry in check, we should not give the gun industry total immunity. As I have pointed out, everything else is stretched thin.

This is an industry that is less accountable under law than any other in America. The only avenue of accountability left is the courtroom, and this bill attempts to slam the courtroom door in the face of those who would hold the industry responsible for its actions.

We ought to hold this industry accountable for product standards so that in the event a juvenile ends up with a gun, common sense safety devices will prevent senseless accidents.

We ought to hold this industry responsible for taking the proper precautions to ensure law-abiding citizens are able to obtain the guns they choose while criminals and other prohibited individuals do not.

Mr. President, I beg, I plead with this body. It is incomprehensible to me that the Senate of the United States is going to provide this kind of liability protection to an industry that does what I just laid out in these remarks. It is incomprehensible.

I have watched the NRA win time after time -- the latest being the federal database of gun sales being obliterated after 24 hours. If this bill passes, there will be no stay on the gun industry for responsible conduct because they can get away without doing it.

I implore my colleagues, please take a second look at this bill. Talk to attorneys like Lloyd Cutler and David Boies. Ask them what this bill will do to merit cases. Mr. President, I yield the floor.”